

EQUAL EMPLOYMENT OPPORTUNITY HANDBOOK

INDIAN HEALTH SERVICE



AN EMPLOYEE'S GUIDE TO THE EEO PROCESS

COMMON QUESTIONS AND ANSWERS

**U.S. Department of Health and Human Services
Indian Health Service
Diversity Management Equal Employment Opportunity
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Q. What is the purpose of this handbook?

A. Federal employees are to be allowed to work in an environment which is free from discrimination based on their race, color, religion, sex, national origin, age, physical or mental disability, or genetic predisposition to having a physical or mental condition. In addition, Federal employees are to be allowed to work in an environment free of retaliation because they participated in the EEO process.

This Handbook is to provide you with information so that if you believe you have been the victim of discrimination, you will know how to proceed with filing an EEO complaint. But if you have any questions, please contact the EEO Manager or Specialist in your Area Office or the staff at the Diversity Management and Equal Employment Opportunity at Indian Health Service Headquarters in Rockville, MD @ eeocanda@ihs.gov

Q. What is the role of the EEO program within the Indian Health Service (IHS)?

A. The EEO Program within IHS is designed to support the Agency in fulfilling its mission of providing the best quality health care to Native American Indians and Alaska Natives, in two ways:

1. It ensures that employment-related decisions within the workplace are made fairly, without discrimination, so that employees' energies can be devoted directly to fulfilling the IHS mission.
2. Through the Affirmative Employment Program, and in conjunction with the Office of Human Resources, it locates and develops qualified Native American Indians and Alaska Natives in accordance with the Indian Preference Law and others to meet IHS workforce needs.

Q. What is the management structure of the EEO program?

A. The EEO program at the IHS relies upon the strong support of the IHS Director in order to achieve maximum results and the Department of Health and Human Services, under the Assistant Secretary for Administration, EEO Compliance and Operations Division. That Division is responsible for overseeing EEO operations for the Office of the Secretary, as well as for providing EEO guidance for the entire Department. However, the Indian Health Service, like most Operating Divisions of the Department, has its own EEO office which is responsible for overseeing its EEO matters.

For the IHS, Diversity Management and EEO (DMEEEO) is responsible for overseeing all EEO matters i.e., complaints and diversity management. Each Area Office has its own EEO Manager who is responsible for processing informal complaints of discrimination, preparation of reports for their respective Area, administration of the special emphasis programs, data analysis, reasonable accommodation, and all other EEO matters for their respective Area. The Headquarters DMEEEO Staff are responsible for processing informal and formal complaints for IHS Headquarters, processing formal complaints for all of IHS, preparing required reports for all of IHS, Special Emphasis Programs, data analysis, reasonable accommodation, and all other EEO matters affecting IHS. However, the Oklahoma City Area Office processes informal and formal complaints for the three Area Offices under its jurisdiction.

The EEO staff at IHS Headquarters in Rockville, MD, consists of the following positions:

Director, DMEEEO
EEO Complaints and Adjudications Manager
Senior EEO Specialist
Staff Assistant.

The EEO staff in the Regional Offices consists of:

Aberdeen Area Office
EEO Manager
EEO Specialist

Portland Area Office, which includes the California Area and Alaska Area
EEO Manager

Oklahoma City Area Office, which includes the Nashville Area and Albuquerque Area
EEO Manager
3 EEO Specialists

Phoenix Area Office
EEO Manager
EEO Specialist

Navajo Area Office
EEO Manager

Tucson Area Office
EEO Specialist

Billings Area Office
EEO Contact

Bemidji Area Office
This is currently being handled by the Senior EEO Specialist at IHS Headquarters

Q. Why would you file an EEO complaint?

A. You have the right to file an EEO complaint when you believe you have been treated differently than your co-workers based on your race, color, religion, sex, national origin, age, physical or mental disability, your prior participation in EEO activities, or your genetic predisposition to having a physical or mental condition. It is when you receive disparate treatment from your co-workers that you may pursue an EEO complaint. Bad management practices towards all employees, while inappropriate, do not serve as a cause for filing an EEO complaint. Any employee can contact the EEO Office within the Area where they are employed and request to speak to an EEO Counselor. That process is explained more fully below.

Q. Is it worth my time to file an EEO complaint?

A. That is a decision you have to make. To give you some perspective, for Fiscal Year 2010, there were 415 EEO complaints filed within the Department. There were findings of discrimination in only three of those complaints. However, 126 EEO complaints were resolved. For the Indian Health Service, for Fiscal Year 2010, 200 EEO complaints were filed. There were no findings of discrimination in those complaints. However, 29 EEO complaints were resolved.

Why do EEO complaints get settled? There are several reasons. Sometimes a complainant will request minimal relief to resolve their complaint. The focus is to bring the parties back to a common goal of working together cohesively without loss of quality of care to the patients served. There will be disagreements in the work environment which is inevitable and often times can be productive. However, actions taken by a Manager or Supervisor may be in the best interest of the mission of the Agency and not taken for a discriminatory reason(s).

Although some complaints are settled, the complainant could prevail if it went to a hearing before an Administrative Judge at the Equal Employment Opportunity Commission. Sometimes actions taken by managers will be difficult to defend because the managers may have left the organization; due to unforeseen circumstance they are not available to testify to explain their actions; managers and witnesses to the event will not be prepared to testify due to lost or misplaced documentation; unwillingness to testify and/or cannot recollect pertinent facts and events due to the length of time it takes from the alleged discriminatory event to the date of the hearing. If a complaint is at the stage where OGC is involved, the attorney will make an assessment of the risks to the Agency in a finding of discrimination being made by the Administrative Judge. If they conclude that risks to the Agency are heavily weighted, they will strongly consider working toward resolution of the complaint.

All of this is stated to advise you that discrimination by IHS is not found very often. It is also to share with you that many cases where discrimination may have occurred has been resolved.

But again, you must decide whether it is worth your efforts to file an EEO complaint. It is your right as a Federal employee.

Q. What Are the Risks to Me if I File an EEO Complaint?

A. Many IHS employees considering whether to file an EEO complaint are concerned about what the risk is if they file a complaint. They are concerned about retaliation.

Each of the anti-discrimination laws has a provision which protects employees from retaliation because they filed an EEO complaint. Thus, if you were to file a complaint and management took some later action against you which you believe they did because you had filed an EEO complaint, you can file another EEO complaint based upon retaliation. Managers understand that it is illegal for them to take an action against an employee in reprisal for filing an EEO complaint.

Q. What is the EEO process?

A. The Equal Employment Opportunity Commission (EEOC) has a separate EEO complaint process for Federal employees. The Federal EEO complaint procedures, which appear at Title 29, Code of Federal Regulations, Part 1614, contain the following steps:

The Informal EEO Process

1. There is an informal process in which an EEO Counselor gathers information about the complaint and tries to resolve the problem. The person filing the complaint is called an Aggrieved Party. This is explained more fully on the following pages.

The Formal EEO Process

2. If the informal process does not resolve the matter, the Aggrieved Party is provided an opportunity to file a formal complaint with the IHS Office of Diversity Management and Equal Employment Opportunity. If they file a formal complaint, they are called a complainant. The formal complaint can be accepted in full, partially accepted, or dismissed. If any of the claims filed are accepted, an investigation is performed for those claims. This is explained more fully on the following pages.

Q. What is an EEO Complaint?

A. An EEO Complaint is a claim of discrimination based on one or more of the following:

- Race
- Color
- Religion
- Sex
- Sexual Harassment
- National Origin
- Age
- Physical or Mental Disability
- Retaliation/Reprisal
- Genetic Information
- Sexual Orientation.

Q. Who may file an EEO complaint?

A. Any employee, former employee or applicant who believes they have been discriminated against due to any of the bases listed above. Contractors may file an informal EEO complaint, and an investigation will be performed to determine whether they have the right to file a formal EEO complaint.

INFORMAL PROCESS

Q. What are the time limits for starting the EEO process?

A. An EEO Counselor must be contacted:

No later than 45 calendar days following an alleged discriminatory incident; or
Within 45 days from the effective date of a personnel action, or
Within 45 calendar days of discovering the discrimination, if there was no way the matter could have been known about earlier.

Q. Who should be contacted to start the EEO process?

A. The EEO Office in the Area where the complaint arose. That Office will put the Aggrieved Person in touch with a certified EEO Counselor. If it is not clear where the complaint arose, any IHS EEO Manager can be consulted for help.

In addition, if the Aggrieved Person believes there would be a conflict of interest if the informal counseling is performed by the local EEO Office, they may contact DMEEEO at IHS Headquarters to start the processing of the complaint.

Remember to keep a record of when you made the initial contact with the IHS EEO Office in case a question of timeliness should arise.

Q. What is the role of the EEO counselor?

A. After the aggrieved party contacts the appropriate EEO Office, intake information will be requested consisting of generally, the aggrieved party's name, contact information, and a brief description of what they wish to complain about. The EEO process will be explained to them and they will be asked if they want to have an EEO Counselor assigned. If they say they do, the EEO staff person will assign the matter to an EEO Counselor. Some IHS EEO offices have an EEO Counselor on staff, others use contractor EEO Counselors, and others have a cadre of collateral duty EEO Counselors. Collateral duty EEO Counselors have another full-time position, but are approved to accept EEO counseling assignments.

When the EEO Counselor contacts the Aggrieved Person, they inform them that they may elect Alternative Dispute Resolution (ADR) or traditional EEO counseling. They will also interview them to get more information about the nature of the complaint, including the

bases of discrimination and a list of the incidents which are being alleged to have been discriminatory. Within the first five days of being contacted, the Counselor fills out Form HHS-651 (EEO Counselors Initial Interview Form). If the Aggrieved Person elects traditional EEO counseling, the Counselor will conduct a fact-finding inquiry which includes contacting the Responsible Management Officials. The Counselor will share with the Responsible Management Officials the claims being raised by the aggrieved party and ask them to respond to these allegations. They will also share what the aggrieved party is seeking to resolve or settle the complaint and see whether the Responsible Management Official is willing to provide the relief being sought, or offer something else to resolve the matter. The Counselor has 30 days in which to complete the counseling. However, the Complainant can agree to extend the counseling for up to an additional 60 days, which means the traditional counseling would then take up to 90 days.

If the Aggrieved Person elects ADR, the process used by the IHS is mediation. The Counselor will inform the EEO Manager so that mediation may be set up. If ADR is elected, the Counselor has 90 days in which to attempt resolution.

If the Counselor is able to get the matter resolved through traditional counseling, or if mediation is successful, a Settlement Agreement will be prepared and signed by all necessary parties.

If the matter is not resolved, at the end of the 30 calendar days, or up to 90 days if the complainant so agrees, the Counselor must fill out a final counseling report (HHS-652), conduct a final interview with the Aggrieved Person and issue the Counselor's Report and a Notice of Right to File a Formal Discrimination Complaint to the complainant stating they have the right to file a formal complaint by writing to DMEEEO, Indian Health Service, with 15 days of their receipt of the Notice of Right to File.

Q. Is the complaint process confidential?

A. During the informal stage, the EEO Counselor will inform the Aggrieved Person that may request and receive complete anonymity during that stage of the process. Complete anonymity means that the Aggrieved Person's name would not be mentioned to any employee-witness who is consulted about the aggrieved party's concerns during a resolution attempt, including the Responsible Management Officials. Once the informal process is completed, if a formal complaint is filed, complete anonymity cannot be granted because employee-witnesses must know the complainant's name in order to respond to the investigator. However, the circumstances of a complaint are always treated confidentially by EEO personnel, and no one other than those in a need-to-know status is informed of the case.

Q. Is an aggrieved party entitled to representation?

A. Yes. They may be represented throughout the entire complaint process. A representative may be an attorney or a union official, but can also be a relative, friend, or co-worker (as long as there is not a conflict of interest, or the co-worker's performance and

required workload is not jeopardized). Regulations provide for reimbursement of attorneys fees, beginning with the date on which the formal complaint is filed, but only in cases where the complainant prevails and only after supporting documentation is approved by DHHS.

IHS must receive written notification of the identity of the representative. In most cases, the Counselor will do this when filling out the Report of Final Counseling, HHS Form 652. But if the complainant does not obtain a representative until filing the formal complaint, they have the responsibility to inform DMEEEO of their representative.

FORMAL PROCESS

Q. What happens once a complainant files a formal complaint?

A. DMEEEO will review the formal complaint and determine whether to accept all of the Claims of discrimination in the complaint, whether to accept some of the Claims for investigation and dismiss others, or whether to dismiss all of the Claims, and will notify the complainant in writing. If any or all of the Claims are dismissed, the reason for the dismissal must be provided to complainant. If all of the Claims are dismissed, the complainant will receive a Final Agency Decision explaining why the Claims were dismissed and informing the complainant of their right to appeal the decision to dismiss to the Office of Federal Operation at the EEOC. If only some of the Claims are dismissed, the accepted Claims will proceed to investigation. The complainant will be informed of their right to raise any allegations that the dismissed Claims should not have been dismissed after the investigation is completed and the Report of Investigation is issued.

For those complaints where some or all of the Claims are accepted, DMEEEO assigns a certified contract Investigator to investigate the case. The Investigator makes all investigation arrangements through the local EEO Manager at the location where the complaint was filed.

Q. What is a mixed case complaint?

A. When the Agency takes an action which may be appealed to the Merit Systems Protection Board (MSPB), the complainant has to elect whether to pursue the matter by filing an EEO complaint with the IHS (mixed case complaint) or by filing an appeal to the MSPB (mixed case appeal). When a personnel action is taken which may be appealed to the MSPB, the notice that the personnel action is being taken will discuss the employee's rights to appeal that action. Generally, those actions which may be appealed to the MSPB include: removal from one's position; reduction in grade or pay; suspension for more than 14 days; a furlough for 30 days or less for a cause that will promote the efficiency of the service; or a reduction in force.

Q. Can a complainant file an administrative grievance?

A. Yes. If the Agency has a collective bargaining agreement which permits allegations of discrimination to be raised in a negotiated grievance procedure, a person wishing to raise a complaint of discrimination must elect to raise the matter by filing an EEO complaint with the IHS or by filing a grievance through the negotiated grievance procedure, but may not do both. In general, the collective bargaining agreements between the IHS and the unions representing IHS employees permit allegations of discrimination to be raised through the negotiated grievance procedure.

Q. Can a formal complaint be amended?

A. Yes. If a complainant has other matters which they believe were discriminatory, they can file a request to amend the complaint which was already accepted. If the new Claims are like or related to the Claims accepted in the original complaint, they can be added to the processing of the existing complaint and will be made part of the investigation. If they are not like or related, the complainant will receive a Final Agency Decision dismissing the new Claims but notifying them that they can bring the new Claims to the attention of an EEO Counselor so they can begin a new complaint. If the investigation has been completed, the complainant has received the Report of Investigation and been notified of their right to request a hearing before an Administrative Judge at the EEOC, and has elected to have a hearing, any new Claims that are like or related will need to be raised to the Administrative Judge as amended Claims to the pending EEO complaint.

A complainant has the right to add a new basis for the complaint at any time during the processing.

Q. What happens during the investigation of a formal complaint?

A. The investigator will normally start by contacting the complainant. This will either be done in person or by telephone, depending on where the complainant is located. In the more remote locations where IHS has facilities, the investigator will perform the investigation by telephone. In other locations, the method of investigation will depend on whether the contractor assigned to provide

an investigator has someone in that area. The investigator will usually contact the complainant first. They will ask a series of questions relevant to the Claims raised and prepare an Affidavit containing the complainant's responses. The Affidavit will be sworn to as being true to the best of complainant's knowledge. The investigator will also ask the complainant if they have any witnesses who they would like to have interviewed and if they have any relevant documents they want to provide.

After interviewing the complainant, the investigator will interview the managers who were responsible for the actions at issue, called the Responsible Management Officials (RMO). The investigator will ask a series of questions relevant to the Claims raised and prepare an Affidavit containing the RMO's responses. These will include questions asked to verify or deny the matters raised by the complainant in their Affidavit. The Affidavit will be sworn to as being true to the best of the RMO's knowledge. The investigator will also ask the RMO if there are any witnesses who they would like to have interviewed and if they have any relevant documents they want to provide.

After interviewing the complainant and the RMO's, the investigator will interview any other witnesses who appear to have relevant knowledge about the Claims at issue. These will typically be witnesses requested by the complainant or by the RMO's. The investigator will review the lists of requested witnesses and will determine which, if any, of those witnesses to interview. The investigator will ask a series of questions relevant to the Claims raised and prepare an Affidavit containing the witness' responses. The Affidavit will be sworn to as being true to the best of the witness' knowledge.

After all of the interviews are completed and the Affidavits are signed and sent to the investigator, the investigator will provide the complainant with an opportunity to rebut the RMO's Affidavits. The investigator will either provide the complainant with a copy of each RMO's Affidavit, or a synopsis of those Affidavits. The complainant can offer rebuttal, but can also elect to waive the right to offer rebuttal.

Q. What happens after the investigation is completed?

A. The investigator prepares a Report of Investigation (ROI), and submits an original and four copies to DMEEEO, IHS. The ROI includes all of the Affidavits taken by the investigator, the documents which they gathered, and a Summary Report explaining what is contained in the ROI. No decision is made at this point as to whether or not there was discrimination.

The file is reviewed by DMEEEO staff. Once approved, the Director, DMEEEO, sends one copy to the complainant, and if they have a representative, one copy to their representative. The original and other copies are kept on file. Included with the copy of the Report of Investigation, the complainant is notified of their right to elect either a hearing before an Administrative Judge of the Equal Employment Opportunity Commission (EEOC), or a Final Agency Decision (FAD) prepared and issued by the Department of Health and Human Services, Assistant Secretary for Administration, Office of Diversity Management and Equal Employment Opportunity, EEO Compliance and Operations Division. The complainant is also notified they can request Alternative Dispute Resolution (ADR), which will occur prior to the preparation of a Final Agency Decision, or the case being forwarded to the EEOC.

If the complainant does not make an election, a Final Agency Decision will be prepared and issued by Diversity Management and EEO, IHS.

In the decision issued by the Administrative Judge, or in the FAD, a decision will be made as to whether there was discrimination.

If the complainant elects a hearing before an Administrative Judge at the EEOC, and the Judge's Decision is not acceptable to the complainant, they may file an appeal with the EEOC's Office of Federal Operations.

If the complainant elects to have a Final Agency Decision prepared by the Department of Health and Human Services, or does not make an election and DMEEEO has the Final Agency Decision prepared, and the Final Agency Decision is not acceptable to the complainant, they may also file an appeal with the EEOC's Office of Federal Operations.

The EEOC's Office of Federal Operations will render a decision on the appeal.

After the complainant has their complaint processed by DMEEEO, they will also have the right to file a case in U.S. District Court.

Q. What is Alternative Dispute Resolution?

A. Alternative Dispute Resolution (ADR) is an attempt to resolve an EEO complaint without having to go through the normal processing of the complaint. It is offered two times during the processing of the complaint. The first is during the informal complaint process. When the EEO Counselor first speaks to the Aggrieved Party, as noted above, they are told they can elect traditional counseling or ADR. If they elect ADR, a mediation session will be set up.

The second time ADR is offered is when the complainant is sent the Report of Investigation. ADR is one of the options available to the complainant in electing how to proceed with their complaint.

- Mediation is the most commonly used form of ADR in federal sector employment disputes.
- The benefits of ADR include early resolution of conflict, which may avoid the cost, delay, and unpredictability of the traditional adjudicatory processes while at the same time improving workplace communication, relationships and morale.
- ADR is a process in which a third-party neutral mediator assists the complainant and the management representative in reaching an amicable resolution through the use of various techniques.
- The complainant does not need agree to anything which they do not believe is in their best interest. The complainant is free to discontinue the process at any time they feel it is no longer helpful.
- Mediators are strictly prohibited from discussing cases with anyone outside the mediation process, including their own supervisors and other officials who might be involved in deciding the case.

- This confidentiality is designed to assure that no one who might be involved in any possible subsequent adjudication will have access to sensitive information, including offers raised during mediation. Nothing from the mediation process will be added to the EEO case record unless both parties agree.
- A mediator works with the parties together or in separate confidential meetings to explore acceptable resolution options or develop proposals which might help the parties reach resolution.

It should be noted that if the complainant elects a hearing before an Administrative Judge at the EEOC, the Judge will usually hold a settlement conference, which is actually another attempt at ADR.

Q. Will there always be a hearing before an administrative judge at the EEOC when that is what the complainant elects?

A. No. The Administrative Judge will consider a Motion for Summary Judgment, also called a Motion to Dismiss, when raised by either side. This Motion is more likely to be filed by the IHS. The complainant will be allowed to file a Response to this Motion.

The Administrative Judge will consider the Motion, the complainant's response, and the evidence of record primarily consisting of the Report of Investigation. If the Administrative Judge determines that a review of the evidence before them shows, even looking at the evidence of record in a light most favorable to the complainant, that the complainant could not prove discrimination was a factor in management's actions which are alleged to be discriminatory, then this Motion will be granted and the complaint dismissed.

Q. What happens in a hearing before an administrative judge at the EEOC?

A. If no Motion for Summary Judgment is filed, or the Motion is denied, then the complaint will go to a hearing. While this is not a trial like those held in a court, it is similar in many ways. It is up to the complainant whether they want to be represented, but the Administrative Judge will allow the complainant some leeway in presenting their case. However, the IHS will be represented by an attorney from the Department's Office of General Counsel.

The Administrative Judge appointed by the EEOC will hear sworn testimony by both Complainant and the Agency. The Agency's key witnesses will be the Responsible Management Officials. Each side will be given the opportunity prior to the hearing to submit a witness list. The complainant and the IHS attorney will also be provided with an opportunity to object to the witnesses proposed by the other side. The Administrative Judge will decide which witnesses will be allowed to testify. All witnesses will need to be able to provide testimony relevant to the accepted claims.

The Administrative Judge will issue a Scheduling Order which provides dates for events related to the processing of the complaint. The Scheduling Order will include dates for the parties to exchange discovery requests. Discovery will consist of two items, interrogatories and a document request. Interrogatories are questions designed to get information needed to pursue or defend the case. Document requests are just that, requests for relevant documents also used to pursue or defend the case. These discovery requests are exchanged between the complainant and the IHS attorney. They must be requested and responded to by a date set in the Scheduling Order. The parties can object to any of the interrogatories and any of the documents requested and the Administrative Judge will rule on the objection.

During the hearing, both parties will have the opportunity to question, or examine, their witnesses. The other side will then have an opportunity to cross-examine the other side's witnesses. Both sides will also have an opportunity to present documents during the hearing. Attendance at an EEOC hearing is limited to persons determined by the Administrative Judge to have a direct connection with the case. Because the hearing is part of the investigation process, it is not open to the public.

The Administrative Judge will make a decision on whether there was discrimination, and transmits their findings, analysis and decision on the merits of the complaint to the IHS and the complainant. The decision can find there was discrimination as to all claims, find there was no discrimination as to all claims, or find there was discrimination as to some claims and no discrimination as to the rest of the claims.

Q. What happens after the administrative judge issues a decision?

A. After the AJ issues their decision, the Agency has 40 days to issue a Final Order adopting the AJ's Decision. However, if the IHS does not wish to accept the AJ's Decision, it has the right to appeal the Decision to the EEOC's Office of Federal Operations. If the AJ finds no discrimination, the IHS has no reason to appeal that decision and the Final Order will adopt the AJ's decision. If the AJ finds discrimination, the IHS must decide whether or not to accept that Decision or whether to appeal it. The IHS may appeal it because it does not agree with the decision, or because it does not dispute the finding, but disagrees with the relief provided. However, sometimes the IHS will decide it is in its best interests to accept a finding of discrimination based on the evidence presented at the hearing, and will not appeal the decision.

Q. What happens if a complainant does not agree with the final decision?

A. If Complainant does not accept the Agency's Final Order issued after the AJ issues the final decision in the complaint, they may appeal the decision to the EEOC's Office of Federal Operations within 30 calendar days after receipt of the final decision. If Complainant is represented by an attorney, the time for filing an appeal runs from the date the attorney receives the Final Order.

Q. What rights does a complainant have to file a case in U.S. District Court?

A. A Complainant may file a civil action in a U.S. District Court:

1. Within 30 calendar days of receiving a Final Order from DHHS;
2. After 180 calendar days from the date of filing the original formal complaint if there has been no Final Agency Decision or Final Order issued by the Department;
3. Within 30 calendar days of receiving the Final Decision issued by the OFO of the EEOC on an appeal;
4. After 180 calendar days from the date the appeal was filed with EEOC, if there is no appellate decision from EEOC within that time.

If a complainant files a civil action in U.S. District Court, they receive a trial de novo. This means a new trial, or that the prior processing of the EEO complaint is not part of the Court's proceedings. The complainant will have the burden of presenting their entire case and of showing that they were the victim of discrimination. The trial is a court proceeding with all of the rules of the court in effect. It is more formal than the hearing before the Administrative Judge at the EEOC. A complainant may represent themselves in the trial. If they had someone other than attorney as their representative during the earlier stages of the process, that person will not be able to represent them at a trial. The IHS will have an attorney from OGC and an Assistant U.S. Attorney from the Department of Justice representing it.

Q. What is sexual harassment?

A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Q. Can an agency employee (who is named as a possible responsible management official) be represented?

A. Yes. They must inform the Agency, in writing, of the identity of their representative. The representative may accompany them when they are required to participate in the EEO process. However, such a representative, if an attorney, is not reimbursed by the

Agency for their work. In some cases, an attorney from the Department's Office of General Counsel may be assigned to represent them, but this does not happen often.

Q. Can a responsible management official be disciplined for wrongdoing under the EEO process?

A. No and yes. The EEO Office itself does not discipline, but the EEO process provides that discipline may be recommended.

Management determines whether discipline should be imposed, and if they decide to do so, the appropriate level of discipline may go up to termination or removal in extreme cases. Any action taken must be coordinated between DMEEEO and Human Resources.

Requests by a complainant for a Responsible Management Official to be disciplined cannot be made part of a Settlement Agreement.

Q. Can filing an EEO complaint stop a personnel action?

A. No. The Agency must continue to fulfill its mission, including proper management of its workforce. If a personnel action was proposed or decided upon prior to the filing of an EEO complaint, a proposed action will continue to be processed and an action that has already been decided upon will be implemented.

Q. Can a Tribal employee, 638 employee, or Intergovernmental Personnel Act (IPA) employee utilize the federal EEO complaints process?

A. Tribal or 638 employees may have other kinds of EEO rights, but the Federal EEO process is not available to them. They need to check with Human Resources at the 638 facility or with the Tribe where they are employed.

An IPA employee may use the Federal EEO process. That is because they are still officially encumbering their Federal position with the IHS.

Q. Can Commissioned Corps Officers raise EEO problems?

A. Yes. If they elect to go through the EEO counseling process, they follow the same process as civilians do. However, they can elect to file a formal EEO complaint without being counseled. There are several other differences in the process which will be discussed below.

Q. Can a Commissioned Corps Officer file on all bases that a civilian employee can?

A. No, at the present time there is no authority for Commissioned Corps Officers to file an EEO complaint on the basis of physical or mental disability.

Q. Is the EEO formal complaint process for Commissioned Corps Officers identical to the process for civilian employees?

A. No, although there are many similarities. The Commissioned Corps Officer's EEO process is under the control of the Public Health Service, not IHS, DHHS or the EEOC. This process is only an internal one. There are no Federal or State laws giving EEO rights to Commissioned Corps Officers, so there is no legal authority for a Commissioned Corps Officer to file an EEO suit in Federal Court. They also have no right to bring their complaint before the EEOC.

Whether or not the Commissioned Corps Officer went through the informal EEO process, the formal complaint process is started by filing an EEO complaint with DMEEEO. In addition, whether or not they went through the informal EEO process, a Commissioned Corps Officer has 60 days after the alleged discriminatory incident to either reach an informal resolution or file a formal complaint. As with the formal EEO process for Federal employees who are not Commissioned Corps Officers, a determination is made whether to accept or dismiss the Claims raised in the formal complaint. If any of the claims are accepted, those claims are investigated.

After the investigation is completed, a copy of the Report of Investigation is sent to the Officer, who is allowed 30 days to offer comments on the ROI. A Recommended Decision is then prepared which is forwarded to the Surgeon General of the United States. The Surgeon

General will then issue a Final Decision. The Officer can appeal the Surgeon General's Final Decision back to the Surgeon General. If the Officer elects to do that, the Surgeon General's decision from the Officer's appeal is the final action allowed in an EEO complaint filed by a Commissioned Corps Officer.

Q. Can a Commissioned Corps Officer have a representative?

A. Yes. But if a Commissioned Corps Officer hires an attorney, it is at their own expense, even if the case is decided in their favor. There is no legal authority for the Agency to pay for a Commissioned Corps Officer's attorneys fees.

Q. Can a federal employee file an EEO complaint based on their sexual orientation?

A. Yes. But the process for such a complaint is different than for EEO complaints raised on other bases. Those differences are explained below.

Q. Is the EEO formal complaint process for claims of sexual orientation identical to the process for claims raised under other bases?

A. No, although there are many similarities. A complainant who files a claim based on sexual orientation needs to go through both the same informal and formal stages of the EEO process. However, it is after the Report of Investigation is issued that the process differs. The EEO process for a complaint where sexual orientation is the basis is under the control of IHS and DHHS, but not the EEOC. This process is only an internal one. There are no Federal or State laws giving EEO rights to complainants alleging discrimination based on sexual orientation. Thus, there is no legal authority for this type of complaint to be raised in an EEO suit in Federal Court. There is also no right to bring their complaint before the EEOC.

After the complainant receives the ROI, IHS will issue a Final Agency Decision within 60 days. If the complainant is not satisfied with the Final Agency Decision, they may appeal it to the Director, EEO Compliance and Operations Division, at the Department of Health and Human Services. The Director, EEO Compliance and Operations Division, will issue a decision within 60 days. That decision is final and the complainant has no further right of appeal or review.

If the complainant files an EEO complaint alleging discrimination on at least one other basis in addition to sexual orientation, the claims raising the other bases will proceed through the usual EEO process. Only the claim of discrimination based on sexual orientation will follow the process explained herein.

Q. Can a complainant raising sexual orientation have a representative?

A. Yes. But if a complainant only raises sexual orientation as a basis, and hires an attorney, it is at their own expense, even if the case is decided in their favor. There is no legal authority for the Agency to pay attorneys fees when the only basis is sexual orientation.

Q. What happens to an EEO complaint if the complainant retires, resigns, transfers, or otherwise leaves IHS employment?

A. EEO complaints usually continue through the process, unless the matter becomes moot because the complainant has left IHS. For example, if someone claimed their supervisor did not treat them properly, then later retired for other reasons, this complaint might be moot. There would be no relief that the EEO process could provide to the individual since they were no longer working with the troublesome supervisor.

However, if a Commissioned Corps Officer resigns their Commission, they no longer have standing to pursue their EEO complaint and it will be dismissed.

IN CONCLUSION

If you have any questions, about the EEO process, contact your local EEO professional or visit our website at <http://www.ihs.gov/eo>.